IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2554 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHATURDAS BECHARDAS PATEL

Versus

COLLECTOR OF STAMP DUTY AND DEPUTY COLLECTOR

Appearance:

1. Special Civil Application No. 2554 of 1996

MR RA MISHRA for Petitioner.

Mr. PD Bhate, AGP for Respondents.

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 08/12/2004

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner has challenged the legality and validity of the order dated 8.8.1995 passed by the respondent No.1 under Section 32-A of the Bombay Stamp Act, 1958 ("the Act" for short) and has prayed to

quash and set aside the same with a further prayer to restrain the respondents from executing and operating the said order.

2. The petitioner has purchased the property in question on 4.2.1991 by sale deed which came to be registered in the month of February 1991 with the Sub-Registrar, Morbi. It is the case of the petitioner that the petitioner purchased the property for Rs. 27,000 whereas the respondents valued the property in question at Rs. 45,34,080. It is also the case of the petitioner that though the sale deed came to be executed in February 1991 proceedings under Section 32-A came to be initiated after more than three years by issuance of several notices calling upon the petitioner to make payment of deficit stamp duty and the penalty. It is the further case of petitioner that an order dated 8.8.1995 came to be passed by the respondents to pay deficit stamp duty of Rs. 4,86,762 plus Rs. 250 by way of penalty. The said order is challenged by the petitioner in the present petition.

3. Shri RA Mishra, learned advocate appearing for the petitioner has relied upon the decision of this Court in the case of Gorwa Vibhag Cooperative Housing Society Ltd. Vs. State of Gujarat, reported in 1993(1) GLH 571, in support of his submission that exercise of powers by the respondents beyond the period of more than 3 years without justifying the delay is arbitrary and illegal and the respondents could not have exercised the powers after a period of more than 3 years and that too without justifying the delay. He has, therefore, submitted that the exercise of powers by the respondents after a period of more than 3 years is exercise of powers after a unreasonable period and the same is arbitrary and illegal,and therefore he requested to quash and set aside the said order.

4. There is no affidavit-in-reply filed on behalf of the respondents justifying the delay in initiating proceedings under Section 32-A of the Act. Mr. Bhate, ld. AGP is also not in a position to explain the delay in initiation of proceedings under Section 32-A of the Act. In view of the fact that the document came to be registered in February 1991 and the proceedings came to be initiated after a period of more than 3 years, it can be said to be an exercise of powers after unreasonable period and the same is arbitrary. This Court, in two unreported judgments rendered in the case of Ambuja Metal Industries Pvt.Ltd Vs. State of Gujarat in Special Civil Application No. 654 of 2000 dated 5.12.2001 and Kumarpal

Kundanmal Bafna Vs. State of Gujarat in Special Civil Application No. 4434 of 2003, has quashed and set aside the orders impugned therein passed by the authorities under the Bombay Stamp Act on the ground that exercise of powers by the authority was after a period of seven years which is not justified and without justifying the delay.

5. Considering the judgment and orders passed by this Court in the aforesaid two cases and considering the fact that in the present case the powers were exercised after a period of more than 3 years, the impugned order dated 8.8.1995 requires to be quashed and set aside and the same is hereby quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

6. It is required to be noted that the petitioner has purchased the property in question for an amount of Rs. 27,000 and the market value of the land is determined by the respnodent at Rs. 45,34,080 and the petitioner is directed to pay the amount of deficit stamp duty of Rs. 4,89,682. Even the petitioner has also stated in the petition and has shown his willingness to sell the property at the same price which is determined by the respondent but it appears that there is no response from the State Government.

[M.R. Shah, J.]

rmr.